"In the present case, it would appear from *Bingham* v. *Bruce*, below, page 114, that the accused was under a statutory duty to answer questions as to the identity of the driver; and, therefore, that the questions were unobjectionable."

It would surely seem that a moment's consideration must show that the view taken by Lord Parker in dealing with an analogous although not identical provision of the law is indubitably right. Otherwise protection is afforded and encouragement given to the hit and run driver, who by his escaping from the scene is very likely to escape responsibility for his actions. In the great majority of cases involving a hit and run driver, while his vehicle may be identified by some by-stander who is sufficiently alert to note the number, the chance of identifying the driver of a rapidly disappearing vehicle must be indeed remote. It is to block this loophole of escape that this particular provision of the law is designed.

It was for these reasons that I ordered that the appeal should be allowed and the case referred to the District Court for hearing and completion according to law.

Appeal allowed.

S.T.U. v. THE COMPTROLLER OF INCOME TAX

[A.C.J. (Tan Ah Tah J.) May 31, 1962]

[Singapore — District Court Appeal No. 19 of 1960]

Income Tax — Assessment — Remittances arising out of property abroad — Whether capital — Whether taxable.

Evidence — Explanations not supported by documentary evidence — Not necessarily ground for rejection.

This was an appeal from a decision of the Board of Review by which certain assessments made by the Comptroller were confirmed. The assessments were made in respect of what were called unsubstantiated credits in the appellant's personal account with K. H. Ltd., remittances received by the appellant in Singapore and certain other items which were alleged to be chargeable income. According to the evidence the remittances in question arose out of the sale of appellant's property which was in Shanghai and proceeds of which were transferred to Hongkong and from Hongkong to Singapore.

Held: the remittances were capital in nature and therefore could not be taxed as income.

In this case certain explanations given by the appellant to the Officers of the Income Tax Department were rejected on the ground that there was no documentary evidence to support them.

Held: documentary evidence can in many cases be very cogent and convincing, but the lack of it, however, should not invariably be a reason for rejecting an explanation.

INCOME TAX APPEAL.

G. S. Hill for the appellant.

Lim Chor Pee (Crown Counsel) for the respondent.

Tan Ah Tah J.: This is an appeal from a decision of the Board of Review by which certain assessments, additional assessments and amended assessments made by the Comptroller of Income Tax, while declared to be excessive to some extent, were confirmed in part by the Board.

The assessments were made in respect of what were called unsubstantiated credits in the appellant's personal current account with a company called K. H. Ltd., remittances received by the appellant in Singapore and certain other items which were alleged to be chargeable income. There is no doubt that the Comptroller thought that the appellant's wealth had increased and that he had been making what were called secret profits from some undisclosed source.

According to the evidence given by and on behalf of the appellant before the Board of Review, the appellant was born in China and came to Singapore in 1926. He commenced to do business in Singapore and also in Indonesia. When certain business concerns in which he was interested were wound up he received a sum equivalent to about HK $560,000. Subsequently, the appellant used HK $460,000 being part of the sum of HK $560,000 to start a business in Shanghai under the style of K. H. H. The balance of HK $100,000 was left in Hong Kong and was there used to start a business also known as K. H. H. When the war with Japan broke out in December 1941 the appellant was in Hong Kong. In December 1942 the appellant proceeded to Shanghai where he stayed throughout the Japanese war and dealt in all sorts of commodities, acquiring considerable wealth while he did so. The position of currency in China being very uncertain at that time, the appellant decided to buy gold which he did in the form of gold bars. He deposited a good portion of the gold with a bullion firm known as C. W., the proprietor of which was one P. T. S. This bullion firm had facilities for transferring gold in the sense of transferring its value from Shanghai to Hong Kong. Because of the unstable political situation in China the appellant decided to transfer his gold and Hong Kong currency to Hong Kong. This he did with the assistance of his friend P. T. S. who was also the managing director of the Y. H. Bank of Hong Kong. The gold and currency were collected from the Y. H. Bank by one T. E. P. who was the manager of K. H. H. of Hong Kong. During the period from January to July, 1948 there was transferred by the bullion firm of C. W. to the Y. H. Bank a total of HK taels 14,569.6 weight of gold, and a total of HK $533,125 representing a total value of approximately HK $5,000,000 or Straits $2,500,000. In his capacity as agent or employee of the appellant, T. E. P. looked after his assets and protected his interests generally. The gold which T. E. P. collected from the Y. H. Bank was deposited with the C. K. Bank. Part of the Hong Kong currency remitted from Shanghai was used to buy more gold which was also deposited by T. E. P. with the C. K. Bank.

During the period from August 1948 to December 1949 all the gold held by the C. K. Bank was sold and the proceeds received in cash by T. E. P. This cash together with the balance of the Hong Kong currency remitted from Shanghai through the Y. H. Bank was held by T. E. P. in a safe deposit box in the Bank of E. A., Hong Kong, or in his office safe. This was corroborated by the evidence of L. T. C., the cashier employed at K. H. H., Hong Kong.

The evidence given by T. E. P. regarding his dealings with the C. K. Bank was also corroborated in various particulars by P. P. M., the manager of the C. K. Bank.

Acting on the instructions of the appellant, T. E. P. made remittances of various sums of money from Hong Kong to Singapore. Some of these remittances were made through banks while others were sent to Singapore via Indonesia by the use of illegal means. This was frankly admitted by both the appellant and T. E. P.

It is to be observed that in the grounds of decision of the Board of Review, although the evidence of P. T. S., L. T. C. and P. P. M. was briefly summarised, nothing was said as to whether the evidence was accepted or not, nor was any comment made on their credibility or otherwise. Each of these witnesses referred to documents which were before the Board of Review and no suggestion was made that any of these documents had been forged. I have naturally not had the advantage enjoyed by the Board of Review of seeing them giving evidence. But I am bound to say that after a careful review of all the evidence and the documents in this case I have come to the conclusion that these witnesses were speaking the truth.

As to the appellant, the Board of Review in their grounds of decision have stated that they were not impressed with his evidence and that he was often evasive when giving answers. T. E. P. also appeared to the Board of Review to be vague and evasive in his testimony. Here again I have not had the opportunity of observing the demeanour of these two witnesses. But a careful examination of the record does not reveal any example of evasiveness on the part of either of them. Forgetfulness there may have been, as is natural in the circumstances, but there is no evasiveness apparent on the record. In my opinion the evidence as to the existence of the gold and Hong Kong currency in Shanghai and the transfer of those assets to Hong Kong is overwhelming and should have been accepted by the Board of Review.

The evidence given by the appellant and T. E. P. regarding the cigarette security deposit account and its origin should, in my view, also have been accepted.

Mr. Ho Chak, a certified accountant, who had examined the documents in the case, gave a description of the various transactions and also explained how remittances were sent from Hong Kong to Singapore. To my mind what he said was credible and reasonable and there was no reason to doubt the correctness of his description.

It is clear that the remittances arose out of property which was originally in Shanghai and which was remitted or transferred to Hong Kong. They were then sent from Hong Kong to Singapore. The remittances are therefore capital in nature and cannot be taxed as income.

With regard to the apparent transfer of the sum of $500,000 from the account of the appellant's wife to his account on the 19th November, 1951, it can be seen that there were four cross-entries in all. The explanation that the original entry was made by the book-keeper in error and that the error was subsequently corrected by a cross-entry is to my mind a satisfactory one. All the four cross-entries were book entries and the result was a mutual cancellation.

In this case certain explanations given by the appellant to the officers of the Income Tax Department were rejected on the ground that there was no documentary evidence to support them. No doubt documentary evidence can in many cases be very cogent and convincing. The lack of it however, should not invariably be a reason for rejecting an explanation. Not every transaction is accompanied or supported by documentary evidence. Much depends on the facts and circumstances of the case, but if the person who is giving the explanation appears to be worthy of credit, does not reveal any inconsistency and there is nothing improbable in the explanation, it can, in my view, be accepted.

Counsel for the Comptroller has conceded that if the appellant can prove the existence of the gold and currency in Shanghai, that these assets were transferred or remitted to Hong Kong, that they were kept in Hong Kong and that a substantial part thereof was remitted to Singapore, he will have discharged the onus of proof which lies on him. In my judgment, the appellant has proved all the links in the chain of events and the appeal should therefore be allowed.

The order will be that the notices of assessment, additional assessment and amended assessment for the years of assessment 1949 to 1954 inclusive be reduced in each case to a figure of chargeable income based on an assessable income as follows:

Year of Assessment 1949	...	$ 9,504.00
Year of Assessment 1950	...	7,590.00
Year of Assessment 1951	...	8,409.00
Year of Assessment 1952	...	30,551.00
Year of Assessment 1953	...	25,237.00
Year of Assessment 1954	...	9,180.00

and calculated after deduction of any allowances to which the appellant may be entitled in each of the said years of assessment and after taking into account income, if any, already assessed in previous assessments.

The appeal is allowed with costs here and before the Board of Review. There will be liberty to apply.

Appeal allowed.

Solicitors: *Rodyk & Davidson.*